

## **REMARKS**

### ***Status of the Claims***

The present Office Action addresses claims 1-5, 7-21, 23, 25, and 27-35, however claims 13, 14, 19, 20, 24, and 32 are withdrawn. Remaining claims 1-5, 7-12, 15-18, 21, 23, 25, 27-31 and 33-35 stand rejected. Applicant respectfully requests reconsideration in view of the remarks herein.

Applicant thanks the Examiner for the telephone interview on June 9, 2010 with Lisa Adams and Applicant's undersigned representative.

### ***Status of References Cited by the Examiner***

U.S. Patent Publication No. 2004/0236327 of Paul et al., cited in the present Office Action, was first cited by the Examiner in the Office Action dated November 11, 2007. However, this reference was not included on the Notice of References Cited (Form 892) that accompanied the November 11, 2007 Office Action, nor has it been listed on a subsequent Notice of References Cited (Form 892). Applicant thus respectfully requests the Examiner to include U.S. Patent Publication No. 2004/0236327 of Paul et al. on a Notice of References Cited (Form 892) to ensure that this reference is made of record and appears among the "References Cited" on any patent to issue from this application.

### ***Amendments to the Claims***

Claim 1 is amended to recite that the set screw is configured to prevent polyaxial movement of the fastening element relative to the spinal anchoring element when the set screw is fully threaded into the bore. Claim 21 is amended to recite that the locking mechanism is adapted to prevent polyaxial movement of the fastening element relative to the spinal anchoring element when the locking mechanism is fully threaded into the bore.

New claim 53 depends from claim 1 and recites that a distal terminal end of the set screw contacts a proximal terminal end of the fastening element to prevent polyaxial movement of the fastening element relative to the spinal anchoring element when the set screw is fully threaded into the bore. New claim 54 depends from claim 21 and recites that a distal terminal end of the locking

mechanism contacts a proximal terminal end of the fastening element to prevent polyaxial movement of the fastening element relative to the spinal anchoring element when the locking mechanism is fully threaded into the bore.

Support for these amendments can be found throughout the specification and drawings, for example in Figure 1 and in paragraphs [0038] and [0041]. No new matter is added.

***Rejections Pursuant to 35 U.S.C. § 103***

Claims 1-5, 7-9, 12, 15, 18, 21, 23, 25, and 27-31 are rejected pursuant to 35 U.S.C. §103(a) as being made obvious by U.S. Patent No. 6,626,906 of Young (“Young”) in view of U.S. Patent No. 5,613,968 of Lin (“Lin”) and as evidenced by U.S. Patent No. 6,136,002 of Shih et al. (“Shih”). Claims 10, 11, and 33 are rejected pursuant to 35 U.S.C. §103(a) as being made obvious by Young in view of Lin and further in view of Shih. Claims 16, 17, 34, and 35 are rejected pursuant to 35 U.S.C. §103(a) as being made obvious by Young in view of Lin and further in view of U.S. Patent Publication No. 2004/0236327 of Paul et al. (“Paul”).

In the June 9, 2010 interview, the Examiner agreed that claims 1 and 21 as amended by this paper distinguish over Young, Lin, Shih, and Paul, alone or in any combination. Accordingly, all claims are now in condition for allowance, and allowance thereof is respectfully requested.

***Conclusion***

Applicant’s amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

No extension of time is believed to be due with this filing. In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

All fees due are believed to be paid. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 141449, under Order No. 101896-251.

Dated: June 15, 2010

Respectfully submitted,

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